

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

WAYNE PORRETTI,

Plaintiff,

v.

JAMES DZURENDA, et al,

Defendants.

Case No. 2:17-cv-01745-RFB-DJA

**ORDER**

**I. INTRODUCTION**

Before the Court is Plaintiff's Motion for Preliminary Injunction. ECF Nos. 32, 33. Plaintiff is an inmate incarcerated in the Nevada Department of Corrections ("NDOC") and currently housed at High Desert State Prison. Plaintiff alleges that he is being denied necessary anti-depressant and anti-psychotic medication and, as a result, is suffering from depression, paranoia, delusions, and auditory hallucinations. For the reasons stated below, the Court grants Plaintiff's Motion for Preliminary Injunction and orders that Defendants provide Plaintiff with the medications he was receiving prior to May 2017, Wellbutrin and Seroquel, in accordance with the prescribed care of Dr. Norman Roitman. Additionally, the Court orders that the NDOC provide a treatment plan to the Court for approval that incorporates these medications and enumerates the manner by which NDOC physicians will implement this treatment plan.

**II. PROCEDURAL BACKGROUND**

Plaintiff filed the initial complaint on June 23, 2017 and the operative complaint on September 26, 2018. ECF Nos. 1, 16. On January 9, 2019, Plaintiff filed the instant Motion for Preliminary Injunction. ECF Nos. 32, 33.

1 The Court held a hearing regarding the Motion for Preliminary Injunction on January 18,  
2 2019. ECF No. 44. The Court continued the hearing to receive testimony from psychiatrist Carla  
3 Carroll, M.D., an employee of NDOC.

4 The Court held a second hearing on January 29, 2019 and received testimony from Dr.  
5 Carroll. ECF No. 48. On January 30, 2019, the Court issued an order requesting additional  
6 medical records and referring Plaintiff to the pro bono program for appointment of counsel. ECF  
7 No. 50. Plaintiff was appointed current counsel on June 12, 2019. ECF No. 160.

8 On April 9, 2019, the Court held a status conference. ECF No. 103. The Court granted  
9 the Motion for Preliminary Injunction for the reasons stated on the record and further explained in  
10 its Order. ECF No. 106. The Court granted relief in the form of a medical evaluation of Plaintiff,  
11 with Defendants to cover costs. The Court stated in its Order that the psychiatrists submitted by  
12 the parties to conduct the evaluation shall not be employees of NDOC. Id. at 9. Defendants  
13 appealed this Order on May 13, 2019 (ECF No. 133) and that appeal was denied as moot on August  
14 20, 2019 (ECF No. 191).

15 On April 19, 2019, Defendants proposed that Dr. Wade Exum conduct the medical  
16 evaluation. ECF No. 113. On May 8, 2019, the Court ordered that both Dr. Exum and Dr. Norman  
17 Roitman, who had previously treated Plaintiff, would conduct independent medical evaluations of  
18 Plaintiff and submit written reports to the Court addressing: a) Plaintiff's current diagnosis  
19 including a review of his medical history; b) whether Plaintiff's prior prescriptions for Wellbutrin  
20 and Seroquel are medically necessary given his current diagnosis; c) the existence and efficacy of  
21 potential alternative medications and/or treatments; and d) requirements for Plaintiff's future care.  
22 ECF No. 130 at 2.

23 An evidentiary hearing on these reports was held on September 19, 2019. ECF No. 204.  
24 Both Dr. Exum and Dr. Roitman testified as to their findings. Id. A continuance of the hearing was  
25 set for November 6, 2019 in which the parties were ordered to present evidence regarding  
26 Plaintiff's past and current course of treatment and argument regarding the recommended course  
27 of treatment moving forward, with detail as to how the treatment would be administered and any  
28 modifications to Plaintiff's current medical regime. ECF No. 207. At that hearing the Court heard

1 further argument from the parties and ordered that the parties file a joint proposed discovery plan  
2 within ten days. ECF No. 216.

### 3 4 **III. FACTUAL FINDINGS**

5 The Court incorporates by reference its factual findings in its previous Order granting the  
6 Preliminary Injunction with relief in the form of the medical evaluations conducted by Drs. Exum  
7 and Roitman. ECF No. 106 at 2-4. Specifically, the Court highlights its previous findings as to Dr.  
8 Carroll's lack of credibility and Plaintiff's credible description of his symptoms as supported by  
9 the evaluations of prior medical professionals established in Plaintiff's medical records. Id. at 4.

10 Turning to the Court's additional factual findings, upon consideration of all of the  
11 subsequent testimony and documentary evidence, the Court finds that Dr. Roitman's evaluation  
12 and treatment proposal are credible and appropriate, and that Dr. Exum's report and proposed  
13 treatment plan are not credible as they are not based upon the relevant standard of care or  
14 appropriate and accepted methods of psychiatric or psychological evaluation. The Court finds that  
15 Dr. Exum provided testimony and recommendations that were biased towards the litigation  
16 position of NDOC. Dr. Exum is a contractor with the NDOC—working at NDOC facilities at least  
17 three days per week. Dr. Exum's entire practice is based upon his contract work with NDOC.

18 The Court finds that Mr. Porretti's medical records are over 700 pages long. His records  
19 span more than fifteen years. He has undergone diagnostic evaluations by psychiatric professionals  
20 on at least fifteen different occasions.

21 The Court finds that the reports submitted by the two experts differed materially both in  
22 scope and in detail. Dr. Roitman's report was twenty pages, detailing its potential limitations, the  
23 sources of information used to compose the report, Plaintiff's mental health history, including a  
24 psychiatric history that considered the diagnoses and prescribed treatment made by former  
25 providers, family history, medical history, substance use history, Dr. Roitman's mental status  
26 examination, his diagnostic impression, and a ten-page discussion of his findings, including  
27 consideration of the assertion made by Defendants that Seroquel and Wellbutrin are prone to abuse  
28 and the reasons why the literature does not support such a finding, and why alternative treatments

1 are not appropriate for Plaintiff. ECF No. 175-2 at 2-21. By contrast, Dr. Exum's report was four  
2 pages, see ECF No. 175-1 at 2-5, and his diagnosis and treatment recommendations relied on  
3 impressions gleaned from his one short interview with Plaintiff for this case and Plaintiff's self-  
4 reported medical history. Dr. Exum's report did not contain a section, like that of Dr. Roitman's  
5 report, which explicitly discussed, as directed by this Court, the benefits, side effects, and potential  
6 for abuse of the relevant medications at issue (Wellbutrin and Seroquel) and how they might  
7 benefit or not Mr. Porretti. Dr. Exum's report did not contain any discussion of Mr. Porretti's prior  
8 experience with these medications as documented by prior psychiatric professionals in Porretti's  
9 extensive medical records. While acknowledging the crucial aspect of such information to an  
10 accurate professional diagnosis and to addressing the issue before the Court, Dr. Exum could offer  
11 no credible explanation for his professional failure to undertake such a review and analysis. In  
12 other words, Dr. Exum diagnosed Plaintiff with substance use disorders, as well as Antisocial  
13 Personality Disorder traits and Borderline Personality Disorder traits and recommended no  
14 medication without considering and reviewing the literature on such medications, without  
15 considering Mr. Porretti's prior experience with the medications at issue, and without reviewing  
16 Plaintiff's extensive (approximately 700 pages) medical records—a review and evaluation that is  
17 acknowledged in the profession as crucial to a full and complete diagnosis. By contrast, Dr.  
18 Roitman relied on psychiatric history questionnaires and a symptom checklist administered to  
19 Plaintiff, his two and a half hour examination, records from prior psychiatric evaluations and  
20 treatment at the Lakes Crossing forensic facility, documentation pertaining to a prior  
21 hospitalization at Southern Nevada Adult Mental Health Services psychiatric hospital, competency  
22 evaluations by psychiatric and psychological examiners, and recollections of treatment and  
23 psychiatric progress notes during his direct treatment of Porretti to reach his conclusions. Dr.  
24 Roitman also relied upon an evaluation of the current literature and studies on the relevant  
25 medications, and, importantly, Mr. Porretti's documented history with them.

26 The experts offered different recommendations for treatment. Dr. Exum's treatment  
27 recommendation was Cognitive Behavioral Therapy and/or Dialectical Behavior Therapy, based  
28 on the conclusion that because Plaintiff stated his symptoms "did not fully abate" in the past with

1 medication, medication is not therefore recommended. Id. at 5. Notably, Dr. Exum's report did not  
2 explicitly consider, as noted, whether a prescription for Wellbutrin and Seroquel is medically  
3 necessary in light of Porretti's history, prior medications used, diagnoses, and current symptoms,  
4 nor the existence and efficacy of potential alternative medications and/or treatments, as mandated  
5 by the Court's previous Order. See ECF No. 130 at 2.

6 Dr. Roitman's report *did* follow these directives, concluding that Plaintiff "has a bona fide  
7 neuropsychiatric illness that can be treated by . . . Wellbutrin and Seroquel, at the doses he was  
8 prescribed before." ECF No. 175-2 at 21. In his report, Dr. Roitman considers case reports of  
9 Seroquel and Wellbutrin abuse amongst substance users but states that these case reports have not  
10 otherwise explained "the mechanism or nature of their abusive mechanisms," id. at 16, as "the  
11 reason why abusers report being high is not substantiated by the science of the chemical as is the  
12 case with opioids, cocaine, methamphetamine, benzodiazepines, hallucinogens and other drugs of  
13 abuse," id. at 15 (citation omitted). Yet even if the discouragement of these medications had a  
14 legitimate foundation in the scientific literature, Dr. Roitman further asserts that they would still  
15 be indicated for Plaintiff's treatment, as he has demonstrated success with them and "severe side  
16 effects to the other antipsychotics indicated for his psychotic symptoms, paranoia, tics, insomnia  
17 and depression." Id. at 17. Moreover, Dr. Roitman notes his treatment recommendation is informed  
18 by the fact that Plaintiff himself never demonstrated a history of Seroquel abuse and that it helped  
19 to alleviate his symptoms. Id. This conclusion is further supported by Dr. Roitman's personal  
20 experience treating Plaintiff; he testified that he first started treating Plaintiff in 2004 and estimated  
21 that he had examined him approximately fifteen to twenty times since then.

22 Dr. Exum, on the contrary, testified that he was not even "directly" aware that Plaintiff's  
23 prior diagnoses had led to him being prescribed Wellbutrin and Seroquel. This is to say that Dr.  
24 Exum did not actually review or read any of the extensive documentation of other treatment  
25 providers with respect to the effects of various treatments in addressing Mr. Porretti's mental  
26 health issues. Porretti told Dr. Exum in the evaluation interview that he had been hospitalized and  
27 treated in and out of prisons on numerous occasions over the past fifteen years. The Court finds it  
28 troubling that Dr. Exum would offer his opinion about the appropriateness of these medications

1 despite being aware of an extensive prior medical history and the associated records and choosing  
2 not to request and review these records prior to diagnosing Mr. Porretti. Nonetheless, Dr. Exum  
3 testified that he did not find Wellbutrin and Seroquel to be necessary to Plaintiff's current treatment  
4 because he found, based on Plaintiff's self-report, that Plaintiff's symptoms were not completely  
5 controlled by those medications in the past and because his current diagnosis of personality and  
6 substance use disorders did not support prescribing those medications. Yet Dr. Roitman found,  
7 after both extensive review of the records as well as his own experience treating Plaintiff over the  
8 past fifteen years, that Plaintiff suffers in part from neuropsychiatric illnesses which "remain[]  
9 immutable" and that Cognitive Behavioral Therapy cannot treat psychosis and Obsessive-  
10 Compulsive Disorder. He further found based upon his own experience with Porretti and the  
11 history of his treatment that these medications did substantially benefit him.

12 The Court reaches opposite findings as to the experts' recommended treatment approach.  
13 The Court finds that Dr. Roitman's thorough and thoughtful examination of Plaintiff's entire  
14 medical history in compliance with the Court's prior Order as well as his personal history treating  
15 Plaintiff, and his testimony resulted in a credible opinion based on acceptable professional  
16 standards and all of the relevant documentation as to Plaintiff's diagnosis and the consequent  
17 treatment regimen. The Court does not find Dr. Exum's diagnosis and proposed treatment plan to  
18 be credible and based upon appropriate professional standards. Dr. Exum's evaluation was based  
19 on a single interview with Plaintiff. By Dr. Exum's own estimation, Plaintiff is a "very poor  
20 historian," at best. If Dr. Exum found Plaintiff's self-report of his medical history to be "very  
21 poor," it defies reason why he would then rely *exclusively* on that self-report to diagnosis and  
22 recommend treatment for Plaintiff moving forward, especially given the extensive medical records  
23 that he could have and should have reviewed.

24 Finally, the Court reiterates its finding based upon the testimony that Dr. Roitman provided  
25 credible testimony and that Dr. Exum did not. The Court finds that Dr. Exum provided partial and  
26 biased testimony designed to support the litigation position of the Defendants.

27 The Court therefore relies on Dr. Roitman's report and testimony to find that Plaintiff  
28 suffers from Neurodevelopmental Disorders including Attention Deficit Hyperactivity Disorder,

1 Tourette's Disorder, and Obsessive-Compulsive Disorder. ECF No. 175-2 at 10. Plaintiff further  
 2 suffers from Schizophrenia with paranoia and non-fixed delusions, Malingering incompetency,  
 3 Antisocial behaviors, and Substance Use Disorder. Id. at 10-11. The Court adopts Dr. Roitman's  
 4 conclusion that Seroquel and Wellbutrin are the medications best-suited to treat the symptoms  
 5 resulting from these ailments.

#### 6 7 **IV. LEGAL STANDARD**

8 A preliminary injunction is "an extraordinary remedy that may only be awarded upon a  
 9 clear showing that the Petitioner is entitled to such relief." Winter v. Natural Res. Def. Council,  
 10 Inc., 555 U.S. 7, 22 (2008). To obtain a preliminary injunction, a Petitioner must establish four  
 11 elements: "(1) a likelihood of success on the merits, (2) that the Petitioner will likely suffer  
 12 irreparable harm in the absence of preliminary relief, (3) that the balance of equities tips in its  
 13 favor, and (4) that the public interest favors an injunction." Wells Fargo & Co. v. ABD Ins. & Fin.  
 14 Servs., Inc., 758 F.3d 1069, 1071 (9th Cir. 2014) (citing Winter, 555 U.S. at 20). A preliminary  
 15 injunction may also issue under the "serious questions" test. Alliance for the Wild Rockies v.  
 16 Cottrell, 632 F.3d 1127, 1134 (9th Cir. 2011) (affirming the continued viability of this doctrine  
 17 post-Winter). According to this test, a Petitioner can obtain a preliminary injunction by  
 18 demonstrating "that serious questions going to the merits were raised and the balance of hardships  
 19 tips sharply in the Petitioner's favor," in addition to the other Winter elements. Id. at 1134-35  
 20 (citation omitted).

21 "A preliminary injunction can take two forms. A prohibitory injunction prohibits a party  
 22 from taking action and preserve[s] the status quo pending a determination of the action on the  
 23 merits. A mandatory injunction orders a responsible party to take action." Marlyn Nutraceuticals,  
 24 Inc. v. Mucos Pharma GmbH & Co., 571 F.3d 873, 878-79 (9th Cir. 2009).  
 25 A mandatory injunction "goes well beyond maintaining the status quo *pendente lite* [and] is  
 26 particularly disfavored. The district court should deny such relief unless the facts and law clearly  
 27 favor the moving party." Garcia v. Google, Inc., 786 F.3d 733, 740 (9th Cir. 2015) (alteration in  
 28 original) (citation and internal quotation marks omitted). "The status quo means the last,

1 uncontested status which preceded the pending controversy.” N.D. ex rel. Parents v. Haw. Dep't  
 2 of Educ., 600 F.3d 1104, 1112 n.6 (9th Cir. 2010) (citation and internal quotation marks omitted).

## 3 4 **V. DISCUSSION**

### 5 **a. Motion for Preliminary Injunction**

6 The Court finds that Plaintiff satisfies the factors justifying preliminary injunctive relief.  
 7 As an initial matter, the Court finds this preliminary injunction to be prohibitive. The “last,  
 8 uncontested status which preceded the pending controversy” was prior to May 2017. Plaintiff had  
 9 been receiving Seroquel and Wellbutrin as prescribed by NDOC physicians. Porretti was then  
 10 informed that these medications had been removed from NDOC’s formulary and that he would be  
 11 receiving substitute or equivalent medications. Based upon this medication change, *inter alia*,  
 12 Plaintiff initiated this action. He sought injunctive relief, prior to being represented by counsel,  
 13 through a letter to the Court which the Court construed as a motion for preliminary injunction. The  
 14 Court considers the potential injunction to be prohibitive because it sought to preserve the status  
 15 quo prior to Defendants unilateral decision to abruptly cease his medications. However, as the  
 16 relief granted might be considered new treatment, the Court applies the higher standard for a  
 17 mandatory injunction to the analysis here. Plaintiff succeeds under either standard.

### 18 **i. Likelihood of Success on the Merits**

19 To establish an Eighth Amendment claim against prison officials for medical treatment, an  
 20 incarcerated plaintiff must show deliberate indifference to his serious medical needs. Peralta v.  
 21 Dillard, 744 F.3d 1076, 1081 (9th Cir. 2014) (citing Estelle v. Gamble, 429 U.S. 97, 104 (1976)).  
 22 The Ninth Circuit has established a two-part test for deliberate indifference. First, the plaintiff  
 23 must establish a serious medical need, meaning that failure to treat the condition could result in  
 24 “significant injury or the unnecessary and wanton infliction of pain.” Id. (quoting Jett v. Penner,  
 25 439 F.3d 1091, 1096 (9th Cir. 2006) (internal quotation omitted)). Second, the plaintiff must  
 26 demonstrate the defendant’s deliberate indifference to the need, meaning that the prison official  
 27 “knows of and disregards an excessive risk to inmate health.” Id. (quoting Farmer v. Brennan, 511  
 28 U.S. 825, 837 (1994)). The defendant’s indifference to or interference with the plaintiff’s medical



1 care must be intentional; negligence will not suffice to state a deliberate indifference claim. Jett,  
2 439 F.3d at 1096. Further, the plaintiff must show that harm resulted from the defendant's  
3 indifference, although the harm need not necessarily be substantial. Id.

4 The Court finds that Plaintiff is likely to succeed on the merits of his Eighth Amendment  
5 claim, incorporating by reference its reasoning detailed in its previous Order. ECF No. 106 at 6-7.  
6 The findings in the record for both orders support a further finding that evidence clearly favors an  
7 injunction here. Plaintiff has satisfied the two-part test for deliberate indifference. First, he has  
8 established a serious medical need in the form of his chronic and severe mental illness. This finding  
9 is uncontradicted or opposed by the Defendants.

10 With regard to the deliberate indifference prong of the two-part test, the Court finds that  
11 “this is not a case of dueling experts.” Edmo v. Corizon, Inc., 935 F.3d 757, 787 (9th Cir. 2019),  
12 stay denied, ID DOC v. Edmo, No. 19A1038, 2020 WL 2569747, at \*1 (U.S. May 21, 2020).  
13 “Typically, ‘[a] difference of opinion between a physician and the prisoner—or between medical  
14 professionals—concerning what medical care is appropriate does not amount to deliberate  
15 indifference.’ But that is true only if the dueling opinions are medically acceptable under the  
16 circumstances.” Id. at 786 (citing Toguchi v. Chung, 391 F.3d 1051, 1058 (9th Cir. 2004) (a mere  
17 “difference of medical opinion ... [is] insufficient, as a matter of law, to establish deliberate  
18 indifference, but not if the chosen course of treatment was medically unacceptable under the  
19 circumstances”) (alterations in original) (internal quotations omitted)). “‘In deciding whether there  
20 has been deliberate indifference to an inmate’s serious medical needs, we need not defer to the  
21 judgment of prison doctors or administrators.’” Id. (quoting Hunt v. Dental Dep’t, 865 F.2d 198,  
22 200 (9th Cir. 1989)). “Nor does it suffice for ‘correctional administrators wishing to avoid  
23 treatment . . . simply to find a single practitioner willing to attest that some well-accepted treatment  
24 is not necessary.’” Id. (quoting Kosilek v. Spencer, 774 F.3d 63, 90 n.12 (1st Cir. 2014)). “In the  
25 final analysis under the Eighth Amendment, we must determine, considering the record, the  
26 judgments of prison medical officials, and the views of prudent professionals in the field, whether  
27 the treatment decision of responsible prison authorities was medically acceptable.” Id.

28 A review of the record reveals that Dr. Exum’s evaluation did not conform to that of a

1 “prudent professional[] in the field,” while Dr. Roitman’s did. Consequently, the competing  
2 conclusions offered by Drs. Exum and Roitman do not constitute “a mere ‘difference of medical  
3 opinion’” between medical professionals. Toguchi, 391 F.3d at 1058 (quoting Jackson v.  
4 McIntosh, 90 F.3d 330, 332 (9th Cir. 1996)). Rather, for the reasons discussed in Section III *supra*,  
5 the Court finds that Dr. Exum’s opinion is “medically unacceptable under the circumstances.”  
6 Edmo, 935 F.3d at 786 (citation omitted). In addition to these previous findings, the Court also  
7 finds that Dr. Exum conducted, at best, a cursory evaluation of Mr. Porretti. He ignored hundreds  
8 of pages of records, which documented Porretti’s medical history and, importantly, his history of  
9 medications and their effectiveness in treating his mental illness. His testimony as to why he did  
10 not pursue or examine these records was wholly incredible. The Court finds that he knew that these  
11 records existed and that he should have reviewed them but chose not to review them. The Court  
12 further finds that he understood that had he reviewed records documenting a broader spectrum of  
13 symptoms than those he observed in his interview and indicating treatment success with  
14 medications at issue in this case that he would have had to provide a different opinion. The Court  
15 also finds that he disregarded the directions of the Court with respect to, *inter alia*, considering  
16 Mr. Porretti’s medical history and reviewing professional relevant literature on the subject  
17 medications. His report and testimony were biased towards supporting Defendants’ litigation  
18 position. For all of these reasons and those previously noted, Dr. Exum’s “expert opinion” is  
19 medically unacceptable.

20 Therefore, Defendants’ reliance on Drs. Carroll and Exum’s opinions to provide a post hoc  
21 explanation for continuing to deprive Plaintiff of his Seroquel and Wellbutrin medications does  
22 not rebut the finding by the Court, that Defendants discontinued Plaintiff’s medication solely as a  
23 consequence of administrative policy, without the “recommendation of a psychiatric health care  
24 provider” and “absent any evidence whatsoever that Plaintiff himself was abusing, selling, or  
25 otherwise misusing these medications.” ECF No. 106 at 6. The Defendants know that Mr. Porretti  
26 continues to suffer from significant and severe psychological symptoms and that Mr. Porretti has  
27 been successfully treated previously with the subject medications, but they have decided to  
28 withhold these medications nonetheless. The Court finds that the Defendants’ intentional and

1 unjustified discontinuation of these medications in light of Plaintiff's well-documented mental  
2 illness constitutes deliberate indifference, which has resulted in an exacerbation of Plaintiff's  
3 condition, as noted by Dr. Roitman in his testimony and Plaintiff himself, in the many and  
4 increasingly frantic filings he has made with this Court. The Court further notes that the records  
5 of NDOC reflect the observations of other staff who have documented Mr. Porretti's worsening  
6 symptoms. All of these findings and the law very clearly support the imposition of an injunction  
7 in this case. The Court further finds that this deliberate indifference has continued in that Mr.  
8 Porretti has not even been provided regular cognitive or behavioral treatment as recommended by  
9 NDOC's own doctors. Indeed, without an injunction in this case, the record supports the Court's  
10 finding that Mr. Porretti would continue to receive minimal if any treatment at all.

#### 11 **ii. Irreparable Harm**

12 The Court incorporates by reference its reasoning from its previous Order to find that  
13 Plaintiff has demonstrated a substantial likelihood of irreparable harm and that Plaintiff would be  
14 severely damaged if an injunction did not issue. As the Court noted, Plaintiff suffers from  
15 "persistent and severe" psychotic symptoms and has a history of suicide attempts. The increased  
16 severity of those symptoms since the Court's previous Order illustrates the extent to which being  
17 deprived of these medications has already resulted in substantial, ongoing harm to Plaintiff. The  
18 longer he is deprived, the more symptomatic Plaintiff becomes, resulting in an increased risk to  
19 his health and safety given his history of self-harm.

20 The Court again emphasizes here that there is a need for outside oversight of Mr. Porretti's  
21 treatment because NDOC physicians up to now have not even provided Porretti with their own  
22 course of recommended treatment. They have effectively blamed him for his mental illness and  
23 the difficulty of treating him. The Court finds that the symptoms of Mr. Porretti's significant  
24 mental illness cannot be used as an excuse to provide essentially no treatment, as has occurred  
25 here. The Court does not reach this finding lightly but only after consideration of the testimony of  
26 two NDOC physicians, an independent psychiatrist, and a review of the extensive records in this  
27 case and multiple evidentiary hearings.

1           The Court further finds, to the extent such a finding is necessary, that Mr. Porretti would  
2 suffer very serious or extreme damage to his mental health should this relief not be imposed. Mr.  
3 Porretti currently suffers from a series of severe and debilitating symptoms including: involuntary  
4 abnormal movements and corporalalia (verbal tics), auditory hallucinations, paranoid delusions,  
5 depression, compulsive ingestion of metal parts and obsessive compulsivity. Mr. Porretti's  
6 awareness of his own symptoms and his continued experience of them has exacerbated his anxiety,  
7 paranoid delusions and compulsive behaviors. The fact that Mr. Porretti has not received these  
8 medications in over two years should not be viewed as evidence that he can and should go on  
9 without these medications or that is he not suffering without them. The length of the litigation is  
10 directly related to his symptoms and how they affected his *pro se* filings. i.e. his ability to clearly  
11 communicate his positions and provide supporting documentation, and the delay in pro bono  
12 counsel finally being found—more than six months after the Court had referred the case for  
13 assignment. Moreover, the Court notes that this case is unlikely to proceed to trial on the merits in  
14 the near term given the global pandemic and its restrictive impact on civil trials in the courthouse.  
15 All of these factors further support the need for intervention now. The Court finds that severe  
16 damage will continue to be done to Mr. Porretti's health without injunctive relief.

### 17                   **iii. Balance of Equities**

18           The Court finds that the balance of the equities tips in Plaintiff's favor. Plaintiff's ongoing  
19 and increasingly severe mental health symptoms as well as denial of the medication that has  
20 historically improved Plaintiff's condition, overwhelmingly outweighs the logistical and financial  
21 burdens Defendants may face as a consequence of the relief granted in this Order. The Court has  
22 previously recognized that Defendants are constitutionally obligated to provide adequate medical  
23 treatment.

### 24                   **iv. Public Interest**

25           Finally, the public interest favors Plaintiff. Prisons must be operated in compliance with a  
26 standard of care that conforms to the Constitution's mandates. The public has an interest in  
27 ensuring the continued dignity of those incarcerated in federal prisons. Inherent in that dignity is  
28 the recognition of serious medical needs, and their adequate and effective treatment.

1                   **b. Nature of Relief Granted**

2           The Court finds that the appropriate relief based on the foregoing is to order NDOC to  
 3 provide Plaintiff prescriptions for Wellbutrin and Seroquel. The Court orders that the NDOC  
 4 develop a treatment plan with the prescription and monitoring of Mr. Porretti based upon Dr.  
 5 Roitman's report and diagnosis. This treatment plan shall be submitted to the Court and Mr.  
 6 Porretti and his counsel within fourteen (14) days of the filing of this order. The Court finds this  
 7 relief to be the narrowest and least intrusive form of relief. NDOC has treatment providers who  
 8 have experience with these medications. NDOC has previously administered these medications to  
 9 Mr. Porretti. These providers will be involved in the development and implementation of the  
 10 treatment plan. The Court is not ordering that these medications be made generally available to all  
 11 inmates exhibiting Mr. Porretti's symptoms. The Court does not find, based upon the testimony of  
 12 NDOC's own experts, that this treatment plan would disrupt the normal and regular operation of  
 13 the facility where Mr. Porretti is housed. At this time, the Court does not order that an outside or  
 14 independent physician directly administer Mr. Porretti's treatment. The treating provider will be  
 15 required, however, to consult Dr. Roitman's report and review all of Mr. Porretti's medical records.  
 16 The Court finds that the development and implementation of a treatment plan consistent with this  
 17 Court's order would address Mr. Porretti's medical needs as required by the Eighth Amendment.

18  
 19                   **VI. CONCLUSION**

20           **IT IS THEREFORE ORDERED** that Plaintiff's Motion for a Preliminary Injunction  
 21 (ECF Nos. 32, 33) is **GRANTED**. Defendants must submit a treatment plan within **fourteen (14)**  
 22 **days** of this order. The NDOC shall be prepared upon approval of the treatment plan by the Court  
 23 to immediately implement it by providing Mr. Porretti with the subject medications (Wellbutrin  
 24 and Seroquel).

25           DATED: May 31, 2020.

26  
 27                   

28                   \_\_\_\_\_  
**RICHARD F. BOULWARE, II**  
**UNITED STATES DISTRICT JUDGE**